

AMENDED IN SENATE AUGUST 18, 2010

AMENDED IN SENATE JULY 15, 2010

AMENDED IN ASSEMBLY MAY 18, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2060

Introduced by Assembly Member Charles Calderon

February 18, 2010

~~An act to add Section 6376.3 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. An act to add Section 7111 to the Public Contract Code, relating to public contracts.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2060, as amended, Charles Calderon. ~~Sales and use taxes: exemption: fixed price contract. Public contracts: fixed price contracts: sales and use taxes rate changes.~~

Existing law imposes requirements on public entities with respect to the terms of public contracts. Existing law imposes a state sales and use tax on retailers and on the storage, use, or other consumption of tangible personal property in this state at the combined rate of $8\frac{1}{4}$ $7\frac{1}{4}$ % of the gross receipts from the retail sale of tangible personal property in this state and of the sales price of tangible personal property purchased from any retailer for storage, use, or other consumption in this state that is stored, used, or otherwise consumed in this state.

This bill would, ~~for any increase in the state sales and use tax rate that occurs on or after the effective date of this bill, exclude from that increased rate of tax, the sale of, and the storage, use or other consumption in this state of, tangible personal property that is subject to a fixed price contract under specified circumstances entered into~~

~~prior to the operative date of the state sales and use tax rate increase, as provided~~ require a fixed price contract, as specified, between a government entity, as defined, and a contractor to authorize payment for a change in the contract price that is attributable to an increase or decrease in the state sales and use tax rate, with the increase or decrease paid in accordance with the contract terms or as agreed to by the parties, as prescribed. By placing new duties on local officials with respect to their contract practices, the bill would impose a state-mandated local program.

~~This bill would take effect immediately as a tax levy.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7111 is added to the Public Contract
- 2 Code, to read:
- 3 7111. (a) A fixed price contract between a government entity
- 4 and a contractor shall authorize payment for a change in the
- 5 contract price that is attributable to an increase or decrease in
- 6 taxes imposed by Part 1 (commencing with Section 6001) of
- 7 Division 2 of the Revenue and Taxation Code. This increase or
- 8 decrease shall be paid in accordance with the provisions of the
- 9 contract governing payment for changes in the work or, if no
- 10 provisions are set forth, payment shall be as agreed to by the
- 11 parties.
- 12 (b) This section shall apply only to an increase or decrease in
- 13 the sales and use tax rate imposed with respect to the following:
- 14 (1) (A) The gross receipts from the sale of, and the storage,
- 15 use, or other consumption in this state of, tangible personal
- 16 property obligated pursuant to a contract entered into for a fixed

1 *price prior to the operative date of the increase or decrease in the*
2 *sales and use tax rate.*

3 *(B) This paragraph shall apply only to a contract in which a*
4 *government entity is a party to the contract.*

5 *(C) For purposes of this paragraph, tangible personal property*
6 *shall not be deemed obligated pursuant to a contract for any period*
7 *of time for which any party to the contract has the right to*
8 *terminate the contract upon notice, whether or not the right is*
9 *exercised.*

10 *(2) (A) The gross receipts from the sale of, and the storage,*
11 *use, or other consumption in this state of, materials and fixtures*
12 *obligated pursuant to a construction contract entered into for a*
13 *fixed price prior to the operative date of the increase or decrease*
14 *in the sales and use tax rate.*

15 *(B) This paragraph shall apply only to a construction contract*
16 *in which a government entity is a party to the construction contract.*

17 *(C) For purposes of this paragraph, materials and fixtures shall*
18 *not be deemed obligated pursuant to a construction contract for*
19 *any period of time for which any party to the contract has the right*
20 *to terminate the contract upon notice, whether or not the right is*
21 *exercised.*

22 *(3) (A) A lease of tangible personal property that is a continuing*
23 *sale of the property for any period of time for which the lessor is*
24 *obligated to lease the property for an amount fixed by the lease*
25 *prior to the operative date of the increase or decrease in the sales*
26 *and use tax rate.*

27 *(B) This paragraph shall apply only to a lease of tangible*
28 *personal property to a government entity.*

29 *(C) For purposes of this paragraph, the sale or lease of tangible*
30 *personal property shall be deemed not to be obligated pursuant*
31 *to a contract or lease for any period of time for which any party*
32 *to the contract or lease has the unconditional right to terminate*
33 *the contract or lease upon notice, whether or not that right is*
34 *exercised.*

35 *(4) (A) The possession of, or the exercise of any right or power*
36 *over, tangible personal property pursuant to a lease that is a*
37 *continuing purchase of the property for any period of time for*
38 *which the lessee is obligated to lease the property for an amount*
39 *fixed by a lease entered into prior to the operative date of the*
40 *increase in the sales and use tax rate.*

1 (B) *This paragraph shall apply only to a lease of tangible*
2 *personal property to a government entity.*

3 (C) *For purposes of this paragraph, the storage, use, or other*
4 *consumption of, or possession of, or exercise of any right or power*
5 *over, tangible personal property shall be deemed not to be*
6 *obligated pursuant to a contract or lease for any period of time*
7 *for which any party to the contract or lease has the unconditional*
8 *right to terminate the contract or lease upon notice, whether or*
9 *not the right is exercised.*

10 (c) *For purposes of this section, the following terms apply:*

11 (1) *“Fixed price” means either of the following:*

12 (A) *The price or prices specified in the contract or lease, and*
13 *the contract or lease does not authorize an increase or decrease*
14 *in price due to an increase or decrease in the sales and use tax*
15 *rate.*

16 (B) *The prices or price specified in the construction contract is*
17 *a lump sum price or a stated unit price or a guaranteed maximum*
18 *price, and the construction contract does not authorize an increase*
19 *or decrease in price due to an increase or decrease in the sales*
20 *and use tax rate.*

21 (2) *“Government entity” means the State of California, or any*
22 *city, county, or city and county, community college district, school*
23 *district, county superintendent of schools, or special district in*
24 *this state.*

25 (d) (1) *This section shall apply only to an increase or decrease*
26 *in the sales and use tax rate that occurs on or after the effective*
27 *date of the act adding this section.*

28 (2) *If the sales and use tax rate imposed pursuant to Sections*
29 *6051.7 and 6201.7 of the Revenue and Taxation Code, or any*
30 *portion thereof, is extended for a period or periods on and after*
31 *July 1, 2011, the sales and use tax rate extension shall be regarded*
32 *as an increase in the sales and use tax rate for purposes of this*
33 *section.*

34 SEC. 2. *If the Commission on State Mandates determines that*
35 *this act contains costs mandated by the state, reimbursement to*
36 *local agencies and school districts for those costs shall be made*
37 *pursuant to Part 7 (commencing with Section 17500) of Division*
38 *4 of Title 2 of the Government Code.*

39 ~~SECTION 1. Section 6376.3 is added to the Revenue and~~
40 ~~Taxation Code, to read:~~

1 ~~6376.3.—(a) On and after the operative date of an increase in~~
2 ~~the sales and use tax rate, to the date on which that increase in tax~~
3 ~~rate ceases to be operative, there is exempted from the taxes~~
4 ~~imposed by this part an amount equal to an amount that is~~
5 ~~attributable to the increased rate of tax imposed with respect to~~
6 ~~the following:~~

7 ~~(1) (A) The gross receipts from the sale of, and the storage,~~
8 ~~use, or other consumption in this state of, tangible personal property~~
9 ~~if the seller is obligated to furnish a government entity with the~~
10 ~~property or the government entity is obligated to purchase the~~
11 ~~property for a fixed price pursuant to a contract entered into prior~~
12 ~~to the operative date of the increase in the sales and use tax rate.~~

13 ~~(B) For purposes of this paragraph, tangible personal property~~
14 ~~shall not be deemed obligated pursuant to a contract for any period~~
15 ~~of time for which any party to the contract has the right to terminate~~
16 ~~the contract upon notice, whether or not the right is exercised.~~

17 ~~(2) (A) The gross receipts from the sale of, and the storage,~~
18 ~~use, or other consumption in this state of, materials and fixtures~~
19 ~~obligated pursuant to a construction contract entered into for a~~
20 ~~fixed price prior to the operative date of the increase in the sales~~
21 ~~and use tax rate.~~

22 ~~(B) This paragraph shall apply only to construction contracts~~
23 ~~in which a government entity is a party to the construction contract~~
24 ~~:~~

25 ~~(c) For purposes of this paragraph, tangible personal property~~
26 ~~shall not be deemed obligated pursuant to a contract for any period~~
27 ~~of time for which any party to the contract has the right to terminate~~
28 ~~the contract upon notice, whether or not the right is exercised.~~

29 ~~(3) (A) A lease of tangible personal property that is a continuing~~
30 ~~sale of the property for any period of time for which the lessor is~~
31 ~~obligated to lease the property for an amount fixed by the lease~~
32 ~~prior to the operative date of the increase in the sales and use tax~~
33 ~~rate.~~

34 ~~(B) This paragraph shall apply only to leases of tangible personal~~
35 ~~property to a government entity.~~

36 ~~(C) For purposes of this paragraph, the sale or lease of tangible~~
37 ~~personal property shall be deemed not to be obligated pursuant to~~
38 ~~a contract or lease for any period of time for which any party to~~
39 ~~the contract or lease has the unconditional right to terminate the~~
40 ~~contract or lease upon notice, whether or not that right is exercised.~~

~~(4) (A) The possession of, or the exercise of, any right or power over tangible personal property pursuant to a lease that is a continuing purchase of the property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to the operative date of the increase in the sales and use tax rate. For purposes of this paragraph, the storage, use, or other consumption of, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.~~

~~(B) This paragraph shall apply only to leases of tangible personal property to a government entity.~~

~~(b) For purposes of this section:~~

~~(1) "Fixed price" means the the prices or price specified in the construction contract is a lump sum price or a stated unit price or a guaranteed maximum price, and the construction contract does not authorize an increase in price due to an increases in the rate of sales and use taxes.~~

~~(2) "Government entity" means the United States, the State of California, or any city, county, or city and county, community college district, school district, county superintendent of schools, or special district in this state.~~

~~(c) This section shall apply only to increases in the sales and use tax rate that occur on or after the effective date of the act adding this subdivision.~~

~~(d) On or before July 1, 2011, if the sales and use tax rate imposed pursuant to Sections 6051.7 and 6201.7, or any portion thereof, is extended for a period or periods on and after July 1, 2011, the sales and use tax rate extension shall be regarded as "an increase in the sales and use tax rate" for purposes of subdivision (a).~~

~~SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.~~